



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MARCH 15, 2023

IN THE MATTER OF:

Appeal Board No. 627569

PRESENT: MARILYN P. O'MARA, MEMBERS

In Appeal Board Nos. 627569, 627570 and 627571, the claimant appeals from the decisions of the Administrative Law Judge filed January 20, 2023, which sustained the initial determinations disqualifying the claimant from receiving benefits, effective November 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$13,104.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future

benefits by eight effective days and charging a civil penalty of \$1,965.00 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant has worked for a school district since 1998. She transitioned from part-time to full-time in 2001, and ever since has worked in the title of account clerk. After experiencing some health

problems related to her work environment, and upon the advice of her doctor, the claimant requested a one-year leave of absence. The school district's board of education granted the claimant an unpaid leave of

absence from September 13, 2021 through September 12, 2022. Her last day of work was September 11, 2021. The claimant was told she would be allowed to return before the leave of absence expired, but not after. Her cousin had previously gone on a one-year leave of absence and returned to work after three months.

The claimant needed money to support her family. She tried calling the employer about returning to work, but she did not get to talk to anyone besides the secretary. She left a message with the secretary, but her supervisor did not call her back. She filed an unemployment claim on November 22, 2021 and certified that she was no longer working due to a lack of work. The claimant received \$13,104.00 in benefits. The claimant returned to work for the employer on August 15, 2022.

OPINION: The credible evidence establishes that the claimant filed a claim for benefits after she tried to return to work early from an approved leave of absence but was unable to do so. The claimant's filing of an unemployment claim while on an approved leave of absence does not establish that the claimant voluntarily quit without good cause (see *Matter of Wilner*, 78 AD2d 563 [3d Dept 1980]). In *Wilner*, the claimant attempted to return to work early from a six-month leave of absence but was told that she needed to submit a written notice four weeks before she could return. The claimant submitted the required notice and then filed a claim for benefits. The Board found that the claimant severed the employment relationship by filing a claim and that she voluntarily left her employment without good cause. The Court reversed and held that the claimant's filing a claim during a leave of absence did not constitute a voluntary leaving of employment. Similarly, in the present case, the claimant tried to return to work early from an approved leave of absence. The claimant credibly testified that she called the employer but did not get to talk with anyone except the secretary, and her supervisor did not call her back. Ultimately, the claimant was permitted to return to work before her leave period was scheduled to end. As in *Wilner*, the claimant was delayed in her return to work because of workplace conditions beyond her control. Under these circumstances, the claimant's filing of a claim does not constitute a voluntary leaving of employment. Accordingly, we conclude that the claimant's filing of a claim did not have the effect of disqualifying her from benefits. We further conclude that, as the claimant was not disqualified, the benefits that the claimant received do not constitute an overpayment.

The credible evidence further establishes that, when the claimant filed her claim, she certified to the Department of Labor that she was not working due to a lack of work. This certification was reasonable, as the claimant had tried to return to work, but was unable to do so. Therefore, this certification does not constitute a willful misrepresentation. Accordingly, we conclude that the claimant is not subject to a forfeiture penalty or civil monetary penalty.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 627569, 627570 and 627571, the initial determinations, disqualifying the claimant from receiving benefits, effective November 22, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$13,104.00 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$1,965.00 on the basis that the claimant made a willful misrepresentation to obtain benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER